IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1919 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

GANPAT H TANDEL - Respondent(s)

==========

Appearance :

MRS FALGUNI D PATEL for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 19/10/2005

ORAL JUDGMENT

Though served with the notice of rule, no one appears for the respondent.

2. In the present petition, the S.T. Corporation has

challenged the legality of the award dated 15.9.2004 passed by the Industrial Tribunal, Surat. By the impugned award, the Industrial Tribunal was pleased to set aside the punishment imposed by the petitioner-Corporation on the respondent-workman. His pay fixation was restored. He was, however, not held entitled to receive arrears pursuant to such restoration of pay fixation.

3. The respondent was engaged as a conductor by the ST corporation. On 25th November 1999 when he was discharging his duties as Conductor, his bus was checked by checking squad of the petitioner-Corporation. It was found that though fare was collected from passengers to the tune of Rs.25.50, tickets were not issued to them. Upon seeing the checking squad, he hurriedly tried to issue tickets and the squad therefore confiscated five unpunched tickets of Rs.2.50 each. The way bill also did not reflect issuance of these tickets. It was also found that there was some overwriting in the way bill. For this misconduct, a chargesheet came to be issued against the respondent. Upon conclusion of the departmental inquiry, the petitioner-Corporation imposed the punishment of placing the respondent in the minimum

of scale by the order dated 23rd February 2000. His basic was therefore reduced from that of Rs.2970 to Rs.2550/-. The respondent challenged the punishment before the Industrial Tribunal. The Industrial Tribunal observed that though the reporter was examined during the departmental inquiry, passengers concerned were not examined. It was observed that such passengers were required to be examined. It was observed that the defence of the conductor that in a hurry he wrongly punched the tickets should have been accepted. The Industrial Tribunal, therefore, set aside the punishment imposed on the respondent.

4. The decision of the Industrial Tribunal cannot be sustained. The employer through a validly conducted departmental inquiry held the charges against the respondent proved. There was material on record to permit the petitioner to come to such a conclusion. The reporter who was present at the time of checking had deposed before the Inquiry Officer. The Industrial Tribunal erred in observing that the passengers were also required to be examined. It is by now well settled that the evidence rendered by the reporter before the Inquiry Officer on the basis of the statements made by the

passengers cannot be discarded as hearsay evidence. Reference can be made in this regard to the decisions of the Hon'ble Supreme Court reported in 2004 AIR SCW 4711 and 2004 AIR SCW 5427. It may be noted that before the Industrial Tribunal, the respondent had given up the challenge to the legality of the departmental inquiry.

5. In view of the above discussion, the order of the Industrial Tribunal cannot be sustained and the same is therefore required to be and is hereby set aside. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)